

1 NEWPORT TRIAL GROUP
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9 Attorneys for Plaintiffs and the Class

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 DAN BOBBA and CHRIS RHODES,
13 individually, and on behalf of all others similarly
14 situated;

15 Plaintiffs,

16 vs.

17 MAGNA, INC.; STEVE MOIDEL; NEP
18 PRODUCTS, INC.; ARAGON PRODUCTS;
19 ALLNUTRI.COM; VITASPRINGS.COM;
20 1BODY4U.COM; BUYVIVAXA.NET;
21 MAGNARSPILLS.COM; and DOES 1-250,
22 Inclusive,

23 Defendants.

Case No. CV 10 1601 EDL

**DECLARATION OF DAN BOBBA IN
SUPPORT OF PLAINTIFFS' OPPOSITION
TO DEFENDANTS' MOTION FOR
SANCTIONS PURSUANT TO 28 U.S.C. 1927**

24 I, DAN BOBBA, declare and state as follows:

25 1. I am a named plaintiff in this action. I have personal knowledge of the following
26 matters and, if called to testify concerning them, could do so competently.

27 2. On September 4th, 2010, I met with Ryan Ferrell, an attorney from Newport Trial
28 Group. Prior to September 4th, 2010, I had never met with, spoken to, or communicated with any
attorney from Newport Trial Group. In this meeting, Ryan Ferrell explained to me that the Defendants

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1 in this lawsuit had filed a "Motion for Sanctions" arising in part out of an online posting that I made
 2 earlier this year. Ryan went over the motion with me, explained to me that his law firm needed to file
 3 a response to the motion, and explained to me that my interests in this case are likely different from the
 4 interests of Newport Trial Group since the case has now been dismissed and because the Defendant
 5 has filed a Motion for Sanctions against Newport Trial Group. I volunteered to share the following
 6 facts with Ryan, and do so without any express or implied offers of compensation of any kind. I do so
 7 only to rebut the allegations of misconduct made against my lawyers in this case.

8
 9 3. On July 8, 2008, I was chatting with a few of my friends on a gaming website called
 10 www.donkdown.com. Our conversation was somewhat vulgar. The conversation at one point turned
 11 to penis enhancement products. During that conversation, I posted the following message:

12 *So my friend called me up the other day with a great opportunity. I'm all ears as he*
 13 *explains how his girlfriend's brother is a class action lawsuit attorney in need of*
 14 *clients. I go buy this stuff called magna rx plus which is supposed to permanently*
 15 *increase your penis size. Everyone knows that shit doesn't work, but I go drop 40 on it.*
 16 *Anyway the lawyer comes over twice and has me sign some documents for this suit*
 17 *saying i took it, it doesn't work, and the company is false advertising. long story short*
 18 *it's supposed to pay between 2-10 k once settled, and these guys have a 90% winrate so*
 19 *I'm hopeful!*

20
 21 4. The previous was something of a locker room rant designed to impress my buddies,
 22 make them laugh, and just be funny. Although it was based on true events, it was written tongue in
 23 cheek.

24 5. The reality is this: I have purchased several penis enhancement products over the past
 25 couple of years. None of them worked. One of the products I purchased was Magna-RX, which I
 26 purchased in late 2009. I mentioned to a friend of mine that it did not work, and he referred me to my
 27 lawyers in this case.

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2 6. After contacting Newport Trial Group about a potential lawsuit early this year, I was
3 contacted by Wynn Ferrell, an investigator for Newport Trial Group. Wynn Ferrell interviewed me
4 and told me that I might be eligible to participate in a lawsuit if I was a qualified plaintiff and was
5 willing to serve the "public interest." Several months later, in June of 2010, Mr. Ferrell again
6 contacted me to follow up. I again told him that I was unhappy with Magna-Rx and wanted to be a
7 plaintiff. Mr. Ferrell explained to me in detail how class actions worked, told me that I would be
8 acting in the public interest, and that any compensation I received would only be if and when it was
9 approved by the Judge. Mr. Ferrell told me that class representative awards typically vary from a few
10 hundred dollars to as high as ten thousand dollars, and typically average about \$2,000, but only if a
11 case is successful, serves the public interest, and is approved by a Judge. Mr. Ferrell did not promise
12 me anything, did not suggest that I make any false or misleading statements, and did not do any
13 unethical. He simply interviewed me about my experience, explained to me my duties as a class
14 representative, and had me sign some paperwork.

15 7. During August of 2010, I met with Wynn Ferrell for several hours to prepare for my
16 deposition in this case and even blocked off my calendar for a day on the date the deposition was
17 scheduled. A couple of days before my deposition, Wynn Ferrell called me and told me that my
18 attorneys recommended that I dismiss this lawsuit because they had concerns about whether I could
19 adequately represent the class of consumers. I told Wynn Ferrell that I would do as they
20 recommended and would agree to dismiss the lawsuit, but that I hoped that someone would stop
21 Magna-RX's false advertising and that I would like to work him and Newport Trial Group again in the
22 future if I purchase any products (such as muscle-building supplements) based on false advertising
23 claims.

24 8. Let me be very clear: neither Wynn Ferrell nor anyone from Newport Trial Group has
25 ever done anything dishonest or unethical or asked me to do or say anything unethical in this case.
26 Wynn Ferrell simply returned my telephone call, interviewed me several times about my experience
27 with Magna-Rx, and met with me to help me understand the class action process. Wynn Ferrell
28 always told me that it was imperative to tell the truth and to tell the whole truth, and nothing more.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is
2 true and correct. Executed this 5h day of September, 2010 at San Jose, California.
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